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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE: OpenAI INC. COPYRIGHT
4 INFRINGEMENT LITIGATION

25 MD 3143 (SHS) (OTW)

5
6 New York, N.Y.
7 June 26, 2025
8 10:00 a.m.

9 Before:

10 HON. SIDNEY H. STEIN,

District Judge

11 HON. ONA T. WANG,

Magistrate Judge

12 APPEARANCES

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14 SUSMAN GODFREY LLP
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Also Present: Guy Ruttenberg, Esq.

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1 THE COURT: Put aside the API for just a moment. Go
2 back to the beginning. If the object of training the LLMs is
3 to get the loss factor as low as possible so that it accurately
4 predicts what the next token is -- again, put API to the side,
5 you can fold it in in a moment -- what accounts for the
6 hallucinations, the incorrect answers?

7 MS. MAISEL: It's just sometimes it gets it wrong.
8 So, for example, if you put in a prompt that the LLM --

9 THE COURT: What you're saying is even though the loss
10 percentage goes down and down, there's still some factor in
11 there and that can account for incorrect answers. Is that
12 essentially it?

13 MS. MAISEL: In a sense. I don't want to get too far
14 into it because a lot of this we just don't know. We don't
15 know why some percent of the time the model will just --

16 THE COURT: I think Microsoft and OpenAI have said
17 they're trying to deal with the issue of hallucinations and I
18 think they've said they're not quite from where it's from
19 either. Does the API change it in some way? Change what we're
20 talking about in terms of the likelihood of hallucinations? I
21 take it to the extent you're changing the temperature, it
22 would.

23 MS. MAISEL: Potentially. So, if we want a more
24 accurate, faithful response to the original expression that we
25 are trying to derive from, turning the temperature down will

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1 help ensure that that output more closely mirrors something
2 from the training data, something that the model has seen.

3 THE COURT: All right. Thank you.

4 MS. MAISEL: Yeah. The hallucination issue, I'm not
5 sure if any of us can explain why it happens precisely.

6 THE COURT: Is hallucination the same thing as
7 incorrect answers?

8 MS. MAISEL: Yes.

9 THE COURT: Okay.

10 MS. MAISEL: And sometimes those incorrect answers
11 look plausible on their face because they're --

12 THE COURT: But for example, the hallucinations that
13 have been in the news in terms of the law are cases that simply
14 don't exist. That's not a misplaced word, that's, like, crazy.

15 MS. MAISEL: Yes.

16 THE COURT: But for you, the misplaced word as well as
17 the crazy thing is a hallucination; is that right?

18 MS. MAISEL: Yes, that's right.

19 THE COURT: Okay.

20 MS. MAISEL: And it's problematic when that
21 hallucination then attributes one of our clients, when it
22 attributes The New York Times, as the owner of that
23 hallucination.

24 THE COURT: It hurts you.

25 MS. MAISEL: And that is the basis of our trademark